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## WOMEN CHARGED WITH VIOLENT CRIMES AGAINST FAMILY MEMBERS IN WESTERN AUSTRALIA 1970-1980: EARLY CONSTRUCTIONS OF THE FEMALE OFFENDER

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Women who commit serious violent crimes pose considerable dilemmas for the legal system. As criminals, they are perceived to require punishment. As women, it is often difficult for the court to reconcile their criminal actions with the behaviour associated with the stereotypical feminine woman. When women have killed or attempted to kill close family members, the discrepancy between a woman's actions and the behaviour expected of women in general is even more evident.

Using court transcripts, this paper provides an historical examination of how explanations of women's lives and crimes were constructed in the 1970s in Western Australia. It explores how attempts were made to reconcile the violent actions of these women with stereotypical feminine roles. The effect of such constructions, both upon the way in which the woman was portrayed in court, and the sentence she received is examined. In particular, the paper considers whether portraying women in stereotypical terms minimised the punitive consequences of their actions, or whether it excluded information which not only more accurately reflected the women's lives, but which would have provided the basis for alternative pleas and defences.<sup>1</sup>

Until recently, the study of women and crime has been a neglected subject area of criminology.<sup>2</sup> Studies have tended to concentrate upon male offenders and have either excluded females completely or have assumed they fit the male pattern.<sup>3</sup> Klein examined the few traditional studies on criminology which have specifically addressed the issue of women and crime.<sup>4</sup> She concluded:

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<sup>1</sup> See Anne Worrall, *Offending Women: Female Law Breakers and the Criminal Justice System* (London: Routledge & Kegan Paul, 1990); Hillary Allen, "Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes" in Anne Worrall (ed) *Gender, Crime and Justice* (Milton Keynes: Open University Press, 1987) and Hillary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Milton Keynes, Open University Press, 1987).

<sup>2</sup> D. Klein, "The Etiology of Female Crime: A Review of the Literature" in Freda Adler and Rita James Simon (eds) *The Criminology of Deviant Women* (Boston: Houghton Mifflin Co., 1979) at 58.

<sup>3</sup> Susan Dantesman and Frank Scarpatti (eds) *Women Crime and Criminal Justice* (New York: OUP, 1980) at 4.

<sup>4</sup> Klein, *supra.* note 2. Klein's etiology of female crime considers early work on female offenders. For example the work of Ceasar Lombroso and William Ferrero, *The Female Offender* (New York: Peter Owen Ltd, 1959)- originally published in 1895; William Thomas, *The Unadjusted Girl* (Boston: Little Brown, 1923) and Otto Pollak, *The Criminality of Women* (Philadelphia: University of Pennsylvania Press, 1950).

The writers see criminality as the result of individual characteristics that are only peripherally affected by social and political forces. These characteristics are of a physiological or psychological nature and are uniformly based on implicit or explicit assumptions about the inherent nature of women.<sup>5</sup>

Thus, these early writers believed that economic, social and political factors were marginal or irrelevant in establishing why women committed crimes. It was thought that women did so for idiosyncratic reasons and explanations for their actions were sought within the realm of the woman's psyche.

In the 1970s, feminist writers began to redress this imbalance in the literature. They criticised conventional criminology, claiming that women were invisible in most studies of crime and that when women were studied it was in a distorted way.<sup>6</sup> Smart, for example, critique discussed the paucity of literature on women and crime. She explored the crude stereotyping of female behaviour in criminology texts, and the exclusion of social and economic factors from analyses of women and crime. In particular, she emphasised the long term effects that earlier writers had, both on the understanding of female crime,<sup>7</sup> and the treatment of female offenders:

[Their] work on female criminality has served to create an ideological framework in which later, more contemporary studies have developed...variations on [their] beliefs...all appear in later works on female criminality.<sup>8</sup>

Subsequent studies<sup>9</sup> have continued to address the issues outlined by Smart.<sup>10</sup> However, the majority of these works do not critique the stereotypical notions of female criminality in criminology texts. They extend the analysis to examine whether women are defined in these terms when they appear in court. Central to these studies is the issue of how women are treated by the court when they are portrayed as conforming to stereotypical assumptions about femininity.

Allen's studies, for example, examined how women's lives may be constructed to conform to these stereotypical assumptions.<sup>11</sup> Her work demonstrates the process of transformation whereby a woman who has committed an intentional and culpable act is presented to the court as a woman who possesses an almost child like helplessness and who would be incapable of acting at all. Allen's predominant concern is with the attempts which are made in professional reports to define women in terms of

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<sup>5</sup> Klein, *supra*. note 2 at 58.

<sup>6</sup> See F. Heidensohn, *Women and Crime* (London: Macmillan, 1985), Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (London: Routledge & Kegan Paul, 1977) and M. Millman, "Images of Deviant Women" in Mary Evans (ed) *The Woman Question* (London: Fontana, 1982).

<sup>7</sup> Smart, *supra*. note 6 at 36.

<sup>8</sup> *Ibid*.

<sup>9</sup> See for example Worrall, *supra*. note 1; Pat Carlen and Anne Worrall (eds) *Gender, Crime and Justice* (Milton Keynes: Open University, 1987); Allen, *supra*. note 2.

<sup>10</sup> Smart, *supra*. note 6.

<sup>11</sup> Allen, *supra*. note 1.

pathology, thereby removing the notion that they are responsible for, or intended to commit, their crimes.

Worrall's 1990 study expands on Allen's analysis and considers the extent to which women are defined within stereotypical feminine discourses.<sup>12</sup> However, Worrall's approach differs from Allen's in that her study is primarily based upon interviews with magistrates, solicitors, psychiatrists and probation officers. These interviews are used to explore attitudes to female offenders. Worrall argues that magistrates, solicitors and others tend to see female law breakers in terms of a duality. They are either women who have conformed to feminine role models or women who have breached these models. Because criminality is perceived as a masculine trait<sup>13</sup> one would expect women who have broken the law to be defined as women who have failed to live up to the feminine model. However, Worrall argues that if a woman's life is constructed in terms of conformity to stereotypical feminine roles the issue of her criminality is minimised. The court perceives these women as "proper" women and since such women do not, according to assumptions about femininity, exhibit masculine traits they cannot be criminal. Worrall suggests that the criteria used to establish whether a woman is a "proper" woman includes:

a) the extent of [the] woman's domestic responsibilities; b) the extent to which her appearance, demeanour and life style accord with sexual 'normality'; and, c) the extent to which her problems can be pathologised and 'treated'. In short, the woman is constructed within the discourses of domesticity, sexuality and pathology.<sup>14</sup>

Failure to conform to these roles suggests that the woman is not a "proper" woman and is therefore capable of criminal behaviour. This woman may be doubly punished because she has infringed both the law and society's expectations of feminine behaviour.<sup>15</sup>

Worrall's analysis demonstrates the proposition that women are portrayed in stereotypical terms in courts and in probation reports. However, without more extensive analysis of individual trials, it is difficult to concur that portraying women in these terms minimises the punitive consequences of their actions. Without knowing the details of the crime, it is impossible to assess the choices which lawyers could have made in order to defend the woman concerned. A murder charge, for example, which is reduced to manslaughter, may look like a lesser sentence but if the evidence indicates that the woman may have been able to obtain an acquittal by claiming self defence, then the manslaughter charge would seem harsh.

This paper is, in part, a response to the propositions put forward by Worrall. However, unlike her study, which used interviews, this paper examines the transcripts of individual cases and will consider whether the women were portrayed in terms of

<sup>12</sup> See Worrall, *supra*. note 1 and Allen, *supra*. note 1.

<sup>13</sup> Worrall, *supra*.note 1 at 31.

<sup>14</sup> *Ibid.* at 60

<sup>15</sup> Clarice Feinman, *Women in the Criminal Justice System* (New York: Praeger Publishers, 1986) at 28.

stereotypical assumptions about femininity and whether portrayal in these terms minimised the punitive consequences of their actions.

A second and more fundamental reason for research in this area is the recognition that the validity of women's experience has been consistently denied in law, both in terms of legal theory and in terms of legal practice.<sup>16</sup> This paper explores how the reality of women's lives and experience in a period of Western Australian history have been forced into a set of predetermined stereotypical categories that fail to integrate women's experience with the law, and which deny alternative accounts of their lives and crimes that more closely reflect the reality of their experience.<sup>17</sup> The process whereby women's experience can be heard and validated by the court, in terms which do not increase criminal penalties, forms an essential component of this paper.

The following analysis is divided into four main sections. The first section outlines the process of obtaining and selecting the criminal transcripts which formed the basis of this study. The second section discusses the ideologies of femininity which have been used to define the behaviour of women in general and female offenders in particular. This section examines literature in the area and considers the characteristics which may be said to be stereotypically feminine. In the third section, individual transcripts are measured against these stereotypical attributes to establish whether the women in this study are portrayed in stereotypical terms. The final section considers the effects of portraying women in these stereotypical terms. Particular consideration is given to the question of whether women's experience is denied validity and whether this portrayal excludes material which could have enabled the women to obtain a lesser sentence or an acquittal.

### Section 1: The Selection Process

The cases used for this research were selected from trials heard by the Western Australian Supreme Court between 1970 and 1980. Considerable documentation was available for each case and included the verbatim transcript of the trial itself as well as all witness statements, statements by the offender, psychiatric reports and pre-sentence reports. Permission to view these records was granted by the Supreme Court Registrar on the understanding that individuals in the cases would not be identified. Each case is therefore identified only by the file number. Additional details, which might identify individuals, have been omitted from the text.

The 1970s was chosen because it marked a period of transition and change for women in Australia. It was during this period that the women's movement in Australia increasingly questioned the restricted roles provided for women.<sup>18</sup> The introduction of no fault divorce on the basis of irretrievable break down of marriage dramatically increased the rate of divorce in the late 70s and forever changed perceptions of the family unit.<sup>19</sup> By 1976 the percentage of women in the workforce had increased to

<sup>16</sup> Naomi Cahn, "Defining Feminist Litigation" (1991) 17 *Harvard Women's Law Journal* 1 at 17.

<sup>17</sup> *Ibid.*

<sup>18</sup> Richard White, *Inventing Australia* (Sydney: George, Allen and Unwin, 1981) at 168

<sup>19</sup> Jill Julius Matthews, *Good and Mad Women* (Sydney, George Allen and Unwin, 1984) at 36

36%.<sup>20</sup> Between 1966 and 1980 the number of married female part-time workers increased by 137.5%.<sup>21</sup> The 1970s was a period which marked women's increasing involvement in the world outside the private domain of the home. It was a time when perceptions of women's role was beginning to change. There is, however, little evidence of this change in the files discussed in this paper. While the role of women was changing, women were still constructed for the courts in stereotypical terms of housewife, wife and mother.

One of the problems involved in researching this material was that only the name of the offender, the charge and the sentence could be obtained without approval. This information is contained in the Criminal Record Book which any person may view. However, for the purposes of this paper it was necessary to obtain considerably more information before files could be selected for the study. For example, the Criminal Record Book did not indicate the relationship between the victim and the offender, a factor which was important for this study. It was therefore impossible to establish which women's specific files needed to be requested. Rather than limit the choice of records, approval was gained from the Registrar to view the files of every female offender who had been charged with a murder, manslaughter or attempted killing between 1970-1980.

Transcripts were finally chosen according to a range of criteria. In order to limit the number of files requested, only the names and file numbers of female offenders tried in the Supreme Court in Perth were taken from the Criminal Record Book. Permission was then sought to view each of these files. Twenty files were requested and 18 of these files were ultimately made available from the State Archives.

Only female offenders charged with murder, manslaughter or attempted killing of family members were ultimately considered for inclusion. The reason for this was that it seemed likely that the actions of these women would call into question stereotypical assumptions about the role of women as housewife, wife and mother and that attempts would be made by lawyers and others to reconcile these women with these traditional roles. The process whereby these women were transformed from violent criminals into "good women" would therefore be evident.

Each file obtained from the State Archives was read and considered for inclusion in this paper. Only complete files were selected and this precluded the use of two files which had pages missing from their transcripts. Additional problems appeared as the selection process continued. Firstly, two offenders were classed as intellectually handicapped by the Courts and this ultimately resulted in their acquittal. These files were rejected because the legal representation was solely concerned with the issue of capacity. Secondly, some of the cases had resulted in an acquittal because of evidentiary or procedural problems with the case. These files were rejected because the transcripts were predominantly concerned with legal technicalities. Twelve files remained after this process. Seven files involved women who had killed or attempted

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<sup>20</sup> *Ibid.* at 54.

<sup>21</sup> *Ibid.* at 55.

to kill their partners, and five files involved women who had killed or attempted to kill their children.

Four files were finally chosen from this sample. These were selected because they all contained extensive statements from the women themselves. Not all these statements are contained in the court transcript because the women often did not speak at their trial, but the files were significant in that each woman had at some point prior to the trial provided an account of her actions to police or others. This meant that it was possible to read about the woman's experience and perception of her offence, and compare it with the version which her lawyer finally presented to the court.

Despite the fact that much of the material in these files is provided in the form of verbatim transcripts, the transcripts themselves cannot provide a complete picture of the way in which these female offenders defined themselves or were portrayed to the court. The texts cannot communicate body language or the tone of an individual's speech. They cannot explain the setting or feel of the courtroom or the physical spaces occupied by the participants in the case. Each of these elements can play a significant part in how a woman is portrayed during a criminal trial. Threadgold has clearly expressed the problems associated with transcripts:

The texts themselves, supposedly written representations of the fullness of speech, of what went on in the spaces and embodied encounters of the courtroom, are already fictions. As the 'written' institutions of the law, they exclude all that cannot be written (without acknowledging that exclusion) and, as apparently objective transcriptions, they perpetuate the public myth of legal truth, fact and justice.<sup>22</sup>

Thus, the transcripts cannot be seen as a definitive account of events in the courtroom. Rather, they are incomplete accounts which are suggestive but not definitive of what may have occurred.

Given the small number of cases used for this paper it would be incorrect to assert that the cases are representative of all cases of violent female offenders or even representative of the twenty cases actually surveyed for this paper. This paper does not suggest that these cases reflect the common experiences of violent female offenders. Issues such as race, class and age inevitably affect the way in which a woman's life is constructed for the courts and the kinds of sentence which a woman ultimately receives. What the selection of cases does attempt to show is that a detailed analysis of court transcripts and associated material can indicate whether sexual stereotyping has occurred in specific cases. It can also demonstrate how such stereotyping has affected the construction of women for the court. For example, the woman's account of her actions and reasons for the crime, contained in her initial statement to police, can be compared with counsel's explanation of the crime provided in the transcript. Comparing these accounts highlights the process whereby a woman's description of an intentional act can be transformed into an unintended act. It also illustrates the gradual deletion of the woman's voice and perspective from the case.

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<sup>22</sup> Terry Threadgold, "Legal Practice in the Courts: Discourse, Gender and Ethics" (1991) 7 *Australian Journal of Law and Society* 39 at 60.

The detailed analysis of a small number of cases also provides the opportunity to consider whether such stereotyping has excluded the possibility of alternative accounts of the woman's life and crime: accounts which would more closely reflect the reality of a woman's life and provide scope for alternative pleas and defences. For example, comparing a woman's initial statement, which provides rational explanations for an offence, with a subsequent construction of her actions which defines her as insane, can indicate that alternative accounts and pleas may have been ignored.

## Section 2: Ideologies of Femininity

In order for judges and lawyers to define women in terms of their conformity to the feminine ideal they must have some perception of the attributes which characterise femininity. This section will consider some of the common attributes which have traditionally been associated with femininity. However, before turning to this analysis it is important to establish why the legal system deems it necessary to consider women in such stereotypical terms. Why is a presentation of a woman's actions which ignores the social, economic and ideological reasons for her crime so appealing? As Sachs and Wilson observed, "the myth of femininity [has been] stronger than the evidence of the real females actually before the court".<sup>23</sup>

Catharine MacKinnon has argued that, "the law sees and treats women the way men see and treat women".<sup>24</sup> Thus, law reflects the priorities and attitudes of the dominant patriarchal social order and assists in its reproduction. Smart argues that woman's place, preserving the traditional family values and performing the unpaid tasks of wife and mother are vital to the peace, good order and stability of patriarchy.<sup>25</sup> The ideology of femininity reflects these values. Thus, a woman who conforms to this image is not only a good woman because she has conformed to the stereotype but because she has supported the perpetuation of the dominant order.

Significantly, it is not only men that define women in terms of their conformity to these roles. The woman herself may internalise these attributes and may define herself in the same terms.<sup>26</sup> This can cause problems when a lawyer or judge is attempting to understand a woman's life and crime because the woman herself may articulate statements which conform with the stereotypical role expected of her, and at the same time make seemingly contradictory statements. For example, a woman who has killed her violent husband may say, "I loved my husband, I'm glad I killed him." In the transcripts studied for this paper the woman's lawyer tended to concentrate on the stereotypical feminine statement and ignore the other. Such an approach fails to explore alternative explanations for her statement and her crime.

Carlen and Worrall have argued that femininity is constructed on the site vacated by masculinity:

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<sup>23</sup> Albert Sachs and Joan Wilson, *Sexism and the Law* (Oxford: Martin Robertson, 1978) at 56.

<sup>24</sup> Cited in Ngaire Naffine, *Law and the Sexes* (Sydney: Allen and Unwin, 1990).

<sup>25</sup> Carol Smart, *The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (London: Routledge & Kegan Paul, 1984) at 136.

<sup>26</sup> Ann Oakley, *Subject Women* (Oxford: Martin Robertson, 1981) at 150.



On the one hand femininity is characterised by self control and independence. Being a normal woman means coping, caring, nurturing and sacrificing self interest to the needs of others. It also means being intuitively sensitive to those needs without them being spelt out. It means being more than man in order to embrace and support man. On the other hand, femininity is characterised by lack of control and dependence. Being a normal woman means needing protection. It means being childlike, incapable, capricious.<sup>27</sup>

Women are thus seen as, submissive, passive, docile, dependant, lacking in initiative, unable to act, to decide, to think.<sup>28</sup> These attributes are generally qualities which are associated with children rather than adults. Oakley suggests that these characteristics are the same attributes which are associated with subordinate groups within society.<sup>29</sup> Individuals falling within the ambit of the subordinate group are defined as well adjusted when they adopt the passive characteristics outlined above. Thus, women, as members of this subordinate group, are perceived to be well adjusted when they are immature, weak and helpless. They are perceived to be maladjusted or bad when they exhibit characteristics more closely associated with the behaviour of the dominant group, such as aggressiveness, assertiveness and independence.

The subordinate feminine characteristics are constituted within a number of discourses which control both a society's expectations of the woman and the image which she has of herself. Carlen and Worrall have identified three major discourses within which the normal/good woman is constructed. These are domesticity, sexuality and pathology.<sup>30</sup>

The common factor in the way in which women are constructed within these discourses is the notion that, by defining woman in terms of one sphere, one is able to extrapolate that understanding to gain insights into a woman's behaviour or attitudes in general. Graham argues that this assumption stems from an ideology of equivalence. That is, the notion that the ideal of femininity involves an equation in which woman equals housewife equals wife equals mother.<sup>31</sup> Establishing conformity to one role implies conformity to the other. Demonstrating that a woman is a good housewife demonstrates more than a woman's domestic prowess. It demonstrates her conformity to the standard of the stereotypically feminine woman. It establishes her not only as a good housewife but as a good woman. It is this notion of equivalence which lawyers and others seem to use when they are presenting information about a female offender. For example, evidence may be provided that the woman is a good mother because being a good mother implies that she must also be a good woman. A woman who is perceived to be a bad mother is more readily perceived to be a bad woman.

<sup>27</sup> Carlen and Worrall, *supra*. note 9 at 3.

<sup>28</sup> Oakley, *supra*. note 22 at 89.

<sup>29</sup> *Ibid*.

<sup>30</sup> See Carlen and Worrall, *supra*. note 9.

<sup>31</sup> H. Graham, "Do her answers fit his questions: Women and the survey method" in Eva Gamarnikow et al (eds) *The Public and The Private* (London: Heinemann, 1983).

Domestic work is perceived as one area in which female offenders can demonstrate their conformity to the stereotypical norm of femininity. Housework, as suggested by Graham, is not simply the application of labour power to objective tasks but is incorporated into the personality structure of the woman who is the housewife. "To be a housewife is part of the very definition of true femininity of modern Australia both in the woman's eyes and those of her culture".<sup>32</sup> Representing a woman in her domestic sphere as housewife reinforces the notion of the woman as a good woman and therefore worthy of the court's lenience. The following case demonstrates how this approach can be used by lawyers to place women within the discourse of domesticity.

### Section 3: Constructing the Female Offender

#### (i) Women and Domesticity

M was charged with the wilful murder of her husband.<sup>33</sup> The charge was subsequently altered to manslaughter and M pleaded guilty to this charge. The transcript indicates that M had entered the bedroom and shot her husband in the leg. The bullet travelled through his body lodging in his heart and he subsequently haemorrhaged to death.

M's actions would, on the surface, appear to provide little opportunity for her lawyer to portray M in any terms at all. M has, after all, pleaded guilty and all that remains is for sentencing to take place. Her lawyer, however, attempts to minimise the sentence which M will receive by addressing the Judge on factors which should be considered before sentence is imposed. A central component of the address focuses upon M's ability as a wife and housewife. Thus, her life is represented to the court in terms of its domestic dimensions.

In M's case, the lawyer attempts to create a picture of domestic idyll for the court where M is seen as a capable housekeeper and loving wife. Indeed, this is seen to be so important that he opens with the following statement:

The defendant is 53 years old and has no previous convictions. She is retired-Lives in a house that faces the river and runs down to a jetty. Beautiful nice garden. Modern brick type of house...Witnesses will indicate she appears to be a very conscientious housewife with a great love of her home and garden and also with a deep regard for her husband.<sup>34</sup>

M is immediately placed in her domestic environment. The court sees a retired woman who loves gardening and housework and cares for her husband. The image is one of a happy retired couple living in rural tranquillity. This image serves the purpose of distancing M from the image of her as a perpetrator of violence. It is difficult to

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<sup>32</sup> *Ibid.* at 151.

<sup>33</sup> File 27/74, WAS 122, Accession No. 4216. Transcript held by the State Archives, Alexander Library, Perth, WA.

<sup>34</sup> *Ibid.* at 1.

imagine that the woman who loves gardening and lives in such a peaceful environment really intended to pick up a gun and shoot her husband.

The image of woman as a good housewife and therefore by definition a good woman occurs in a number of other transcripts. Of course, the central feature in each of these cases is that the woman must be perceived not just as a housewife but also as a good housewife.

Being a good [house]wife means maintaining a clean tidy home, yet giving the impression of doing so with a minimum of effort... Evidence of labour, conflict or mess is interpreted as evidence of failure rather than as a true reflection of the reality of women's domestic lives.<sup>35</sup>

The image is stereotypical and bears little relation to the activities of a normal housewife and a normal household routine. If a clean tidy home defines the normal woman, the untidy home implies the woman must be in some way abnormal and therefore mad or bad. In the following case, inability to keep a house clean was used as an indicator for insanity.

J was charged with the wilful murder of her 14 week old baby.<sup>36</sup> J had killed her child because she believed God had told her to sacrifice the baby. Three psychiatric specialists testified in this case. All concluded that J was, at the very least, suffering from a severe mental disorder. All three considered that she was most probably psychotic and suffering from schizophrenia. One report stated:

In my opinion, [J], at the time of committing her alleged offence J was in an acutely disturbed mental state. She had hallucinations of hearing - hearing the Lord and Satan speaking to her.<sup>37</sup>

Given these reports, the woman's behaviour and the way in which the child was killed, one would have expected that her lawyer would only have needed to concentrate upon the woman's pathology in order to obtain a verdict of unsound mind. However, rather than concentrating on the specific examples of the woman's pathology, for example her auditory hallucinations, a considerable amount of time was spent discussing J's domestic skills and her failure in this arena was used to demonstrate her madness. Indeed, the emphasis in the transcript seems to suggest that this was of greater significance in establishing that J was insane than the fact that she had killed a child because spirits had told her to do so. For example, her husband in cross examination was asked:

Lawyer: Were the milk bottles still out then- Could you tell? This business of the milk being left out. I understood your wife was, up until then, very good with the baby.

<sup>35</sup> Carlen and Worrall, *supra*. note 9 at 4.

<sup>36</sup> File 39/74, WAS 864, Accession No. 4231. Transcript held by the State Archives, Alexander Library, Perth, WA.

<sup>37</sup> *Ibid.* at 5.

Husband: She was very careful about the way she looked after it and very clean. It would be most unlike her to leave the milk out all day.<sup>38</sup>

Another witness was also asked questions about J's household routine.

Lawyer: Did you notice subsequent to that the condition of the kitchen? Was it clean and tidy?

Witness: To put it mildly the place was a mess...The kitchen sink was full of milk bottles. There was food in dishes and pots and there was unwashed crockery. The Dining room table contained the bath and the towels belonging to the baby.

Lawyer: Did she normally allow the baby's water to lie there or did she deal with them properly?

Witness: No. They were never allowed for any length of time. I mean say ten minutes, maybe fifteen minutes after the baby was bathed, they may have been there, but never for any length of time.<sup>39</sup>

If, as Worrall suggests, women's lives are represented by the dominant discourses of femininity in order to minimise punishment, one would expect that this case would only need to consider the woman's pathology. However it would seem, in the 1970s at least, that it was not sufficient for a woman to be defined through the discourse of pathology. A woman must be defined as mad through the discourses of domesticity and sexuality. Establishing that a woman is insane on the basis of gender neutral factors, such as hallucinations and communicating with God, is not sufficient to show that a woman really is insane. The court needs to be able to see that she is not coping with the traditional activities associated with the good/normal woman.

## (ii) Women and Pathology

The pathological label is frequently applied to female offenders. This is particularly evident when women have committed crimes which do not seem to fit in with the stereotypical image of female behaviour.<sup>40</sup> The violent woman is clearly at odds with this image and she is therefore more likely to be seen as sick and in need of psychiatric help. This is particularly so when the woman's life prior to the violent act is perceived to conform to stereotypical feminine behaviour. Under these circumstances, there seems to be an assumption that the woman must be mad.

The case of L exemplifies this approach.<sup>41</sup> L was charged with attempting to kill her paraplegic husband. She had spent a considerable number of years caring for her invalid husband and running the family home. Witnesses provided accounts of her years of devoted nursing. One stated:

<sup>38</sup> *Ibid.* at 2.

<sup>39</sup> *Ibid.* at 6.

<sup>40</sup> See Susan Edwards, *Women on Trial* (Manchester: Manchester University Press, 1984).

<sup>41</sup> File 13023. WAS 1426, Accession No. 4216. Transcript held by the State Archives, Alexander Library, Perth, WA.

In her capacity as nurse she gained not only the admiration of me but of his and her many friends. We could see that she was doing a 24 hour job. Her devotion was always most evident and her one thought was to make him comfortable in everyway that she could. She devoted her life to his.<sup>42</sup>

L provided rational reasons for her attempt to kill her husband. She argued that she was concerned for his suffering and was concerned about what was going to happen to him when she was admitted to hospital for minor surgery. Despite this, L's actions were defined as insane and she was placed in a mental hospital.

Not all female offenders are portrayed as insane but many are portrayed as irrational and mentally irresponsible. Constructing women in these terms is often not treated by the court as indicating an aberration from female normality but is merely seen as an inherent characteristic of all women.<sup>43</sup> Thus, the normal woman is to some degree perceived to be irrational and emotional. Portraying a woman in these terms ensures that she is perceived to conform to stereotypically feminine behaviour and is a "proper" woman.

In the case of R, for example, the woman was constructed as an irrational individual who was depressed because her marriage had failed.<sup>44</sup> R had attempted to kill her two children with sleeping tablets after she realised that a hoped-for reconciliation with her husband was not going to take place. The Doctor's report stated:

Her state of mind had become such that it was one of depression of mood, of considerable anxiety about reconciliation and in the last two days prior to [her action], extreme frustration in her inability to contact her husband – all these led to her suffering symptoms of reactive depression.<sup>45</sup>

Despite the seriousness of her actions, R was given a probation order and the children were returned to her care.

### (iii) Women's Inability to Act

A central factor in the cases cited above is the fact that these women were constructed as women who did not intend their actions or who were incapable of acting in the way the evidence suggests. In the case of J, her inability to consciously act is explained by her insanity. In the case of M, an image of a woman is constructed who conforms to the stereotypical role of the passive woman: a woman who would be incapable of pulling the trigger of a gun.

<sup>42</sup> *Ibid.* at 42.

<sup>43</sup> Allen, *supra* note 1 at 90.

<sup>44</sup> File 71/74 WAS 122 Accession No. 4216. Transcript held by the State Archives, Alexander Library, Perth, WA.

<sup>45</sup> *Ibid.* at 8.

M's initial statement to the police officer immediately after the shooting stated in part, "I did it. I knew what I was doing. Look at the bruise on my leg."<sup>46</sup> A neighbour, who had arrived at M's house shortly after the shooting, stated that M had said to her, "Look at this - I couldn't take it any longer."<sup>47</sup> According to the statement made by her son-in-law, M had phoned him earlier in the evening and told him that, "she had a gun pointed at [her husband] but it wouldn't go off."<sup>48</sup> M had admitted in her statement to the police that she had told her husband one week prior to the shooting that she was going to kill him. Her statement reads, "About a week ago he bashed me and I told him I'd shoot him. I said I'll kill you, you bastard."<sup>49</sup> Her statement also indicates she had a knowledge of firearms. According to the Detective Sergeant, M had said her father was a lock and gunsmith and that she knew how rifles worked.

By the time the case comes to court, M is represented as having no intent to kill her husband and has only the haziest recollection of events. She also has no knowledge of guns. The transcript states:

Judge: Did she load the gun?

Lawyer: No she didn't load it. She has never handled a gun.

Judge: All she did was pull the trigger. What about the safety catch?

Lawyer: She has no recollection of actually handling the gun at all. She patently accepted responsibility of having picked up the gun and fired it... She has fired it in some fashion but she can give no precise picture of the circumstances or really why she particularly fired it in the direction of the accused at the time...She just cannot help in this area. She just cannot assist.<sup>50</sup>

This theme is repeated in the case of S who was charged with the wilful murder of her husband.<sup>51</sup> She subsequently pleaded guilty to manslaughter. She had stabbed her husband to death outside a shopping centre. The coroner's report and details provided in the transcript indicated that S had received a letter from her husband which indicated that he wanted a divorce and wanted to sell the family home. In response to this letter S took a knife from the kitchen and placed it in the glove box of her car. She drove to her husband's place of work and tackled him as he left work. She struck him over eleven times with the knife and inflicted violent wounds on the left side of the forehead, on the eyelids and on the chest.

S's lawyer attempts to distance her from her actions by suggesting that she could not recollect stabbing her husband. He states: "...and she herself said that she was not sure whether she had stabbed him." When this is contested the lawyer argues,

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<sup>46</sup> File 27, *supra*, note 33.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* at 5-6.

<sup>51</sup> File 10/75, WAS 122, Accession No. 4231.

“She only recollects striking him once...I don’t think she really knew what she was doing”<sup>52</sup>

By presenting information in this way, the woman is separated from her violent act and she is therefore more easily perceived to fit within the dominant discourses of femininity. It is interesting to note that in the cases of both M and S the discussion about the women’s memories of their violence occur within the first few pages of the transcripts. Suppressing the image of these women as culpable and intentional subjects in the early stages of their cases ensures that they are more readily perceived as individuals who fit the image of the good woman.

Allen has argued that the professional reports prepared by psychologists and social workers often attempt to suppress or erase the actions of women which imply that they are aware of their actions. These reports typically,

acknowledge the trajectory of objects in space - the knife in the hand, the thrust of the blade into the heart - but progressively delete from that trajectory all that would mark it as an action by an intentional and culpable subject.<sup>53</sup>

The transcripts used for this paper suggest that it is not only professional reports which attempt to erase or suppress intention and culpability. In the cases cited above, lawyers also used these techniques to separate the women from their actions. M was separated from the process of firing the gun and S from the process of inflicting stab wounds.

#### (iv) Silent Women

Each of the cases used in this paper have portrayed women in terms of their conformity or lack thereof to stereotypical feminine traits. The possibility of portraying women in these terms rests in large part upon the fact that the women themselves did not speak during their time in Court. Their silence reinforces the notion that they are the stereotypical quiet, passive, unassuming women constructed for the court. It also ensures that these women are perceived as “partial beings, needing completion,... denied the right to be individuals with the ethical right to speak and be heard”.<sup>54</sup>

Worrall suggests that women’s silence in the courtroom is probably not surprising.

Since women are seen as [reacting] rather than acting when they break the law, and since they are seen to be incapable of thinking and making decisions, it is reasonable to assume that they need to be explained rather than to explain.<sup>55</sup>

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<sup>52</sup> *Ibid.* at 11.

<sup>53</sup> Allen, *supra*. note 1 at 83.

<sup>54</sup> Threadgold, *supra*. note 22 at 60.

<sup>55</sup> Worrall, *supra*.note 1 at 85.

Silencing these women ensures that their perception of the situation is never presented to the court. The lawyer is able to construct an acceptable explanation of the woman's behaviour and suppress the information which is unacceptable. Thus the woman's life, is made sense of by others and not by her. The woman is silenced and her account of her life is not heard by the court.

Of course, some female offenders do speak at their trial but even when they are able to speak they do so in terms dictated by the courts. Ardener has discussed the way in which individuals may speak but at the same time be muted because they cannot express their ideas in their own way:

The theory of mutedness...does not require that the muted actually be silent. They may speak a great deal. The important issue is whether they are able to say all that they would wish to say, where and when they wish to say it. Must they for instance re-encode their thoughts to make them understood in the public domain? Are they able to think in ways which they would have thought had they been responsible for generating the linguistic tools with which to shape their thoughts? If they devise their own code will they be understood?<sup>56</sup>

The power of legal discourse is such that it has the ability to disqualify alternative accounts which may be articulated by the offender or others when these accounts do not fit the dominant mode of expression.<sup>57</sup> This process of selecting and editing the accounts starts before the trial when the solicitor decides which pieces of information from the client's account are going to be presented to the Court and which will be ignored. Much of the information provided by the client is left out no matter how relevant or important it may seem to her. The legal version presented to the Court becomes the only valid version of events and alternative accounts of events are disqualified.<sup>58</sup>

Of central significance in this process is the effect which silencing a woman's account may have upon the way in which a woman experiences her trial and understands her crime. Presenting the edited version of events to the Court as the only valid and hence true version of events ensures that the woman herself may ultimately see her life and crime in the stereotypical terms used during the trial. For example, in the case of a woman who has killed her husband, minimising or ignoring the effect of domestic violence upon her life reinforces her own belief that she is entirely to blame both for her husband's abuse and her violent act. Presenting a woman as insane means that she may perceive herself in this way despite the fact that she may have provided rational explanations for her actions. Both of these situations occurred in the cases studied for this paper and will be considered in some detail below in Section Four. Thus, portraying these women in stereotypical terms confirms their already preconceived notions that they are the irrational or incapable people they believed

<sup>56</sup> S. Ardener, *Defining Women* (London: Croom Helm, 1978) at 21.

<sup>57</sup> Carol Smart, "Law's Truth/Women's Experience" in Reg Graycar (ed) *Dissenting Opinions: Explorations in Law and Society* (Sydney: Allen and Unwin, 1990) at 2.

<sup>58</sup> Carol Smart, "Law's Power, the Sexed Body and Feminist Discourse" (1990) 17(2) *Journal of Law and Society* 194 at 196.



themselves to be. This process ensures that not only is the court able to deny the reality of a woman's life but that the woman is able to participate in this denial.

The following section will examine the alternative accounts of women's lives which have been disqualified by presenting women in stereotypical terms.

#### **Section 4: Disqualifying Alternative Accounts of Women's Lives and Crimes**

In each of the cases discussed above, the disqualification of alternative accounts was an integral factor in the way in which each woman's life and crime was presented and explained to the court. This section will consider the alternative accounts which were disqualified and will examine the effects which this had upon the legal presentation of the woman concerned and the effect which this may have had upon sentencing.

The cases cited in Section Three have demonstrated how lawyers may attempt to construct female offenders in terms which conform to stereotypical femininity. Portraying women in these terms necessarily requires that accounts which do not conform to this image are disqualified or silenced during the course of legal representation. Worrall has argued that female offenders may minimise the punitive consequences of their actions when their lives are represented in these terms. She suggests that there is a trade-off between the legal representation of women in these terms and the actual sentencing outcome. The following analysis of the cases researched for this paper demonstrates that this may not be the case and that silencing, and disqualifying accounts which do not fit stereotypical notions of femininity may actually limit the choice of defences and pleas available to the women.

In the case of M, the woman who shot her husband, the account which was obscured/ disqualified during the course of the case was the account which depicted M as a victim of domestic violence. M had made an initial statement to police which suggested she was a victim of domestic violence, and had shot her husband in response to his violent behaviour. This statement was included in M's file but was not contained in the transcript. Rather than using this information to explain M's actions, domestic violence is only ever included peripherally in the case in order to define M in terms of her sexuality and pathology. Thus, domestic violence is not completely excluded from the account provided to the court but the social, psychological and ideological elements are obscured. The violence is used to personalise the experience of M rather than place her life and her crime in a social, economic and political context.

The following abstracts from the transcript demonstrate how these elements of the crime were disqualified. The first indication in the transcript that M is a victim of domestic violence occurs when her lawyer discusses M's sexual relationship with her husband. The transcript reads:

Lawyer: She tells me that her husband...If your Honour will see through the notes you will see an extraordinary situation where she describes her husband as a great lover but who had physically ill treated her.

Judge: I have heard that happens.

Lawyer: Over periods of time - I think she expressed it this way - for ten minutes of heaven she had to put up with an hour of hell, but I can't aid your Honour in this regard because that hasn't been my experience.

Judge: My experience is probably not as wide as yours either.<sup>59</sup>

This discussion occurs on the first page of the transcript. One can well imagine how M must have felt while this interchange was taking place. Silenced by the system, and probably already feeling excluded from the arguably masculine characteristics of the courtroom, she sat and listened while two men discussed her sexuality and her sexual relationship with her husband in a way which implied they had no insight into the conflicting emotions and feelings which confront a battered woman. Her comments, taken from a statement made immediately after she had killed her husband, are trivialised rather than seen as an indicator of her emotional turmoil. Humour is used to cover the judge and lawyer's discomfort in discussing this issue. There is no recognition that this information provided them with an opportunity to consider some of the underlying reasons why the offence took place.

Domestic violence is also used to define M within the discourse of pathology. The husband's violence is used to explain M's increasing stress levels and her inability to cope. It is not used to suggest that M was provoked into killing or had killed in self defence. Indeed, the issue of self defence is discounted in this case. M had stated that, [Her husband] reached out from the bed and grabbed he by the neck and threw her backwards against the chest of drawers.<sup>60</sup> A doctor's report stated that there was no indication she was suffering from bruising around the neck or throat. There was, however, evidence that she had sustained bruises on the legs but the Judge commented that there were insufficient injuries to establish she had been hurt that night. The effect of this comment is that the husband's violence is erased from the case.

Her lawyer does not use psychiatric or psychological reports to demonstrate that M is pathological, but a report from M's own doctor is provided which states that the doctor had perceived M to be under considerable stress for some period of time prior to the shooting. The report states that M had been to see the doctor some weeks before the event because she had passed out. The doctor commented that M was under considerable strain and that he had suggested she lighten her work load because it was too much for her. M had discussed how isolated she was because her husband did not allow to her see her friends or drive the car. The doctor suggested that she try to get out more. The doctor had also tried to talk to M's husband and had explained that she needed to socialise more and that she needed to stop heavy work such as lawn mowing.<sup>61</sup> The doctor's report is used to show M's increasing stress because she had too much work to do and insufficient social activities. It is not used to show the abusive situation which M was in and how her life seemed to be completely controlled by her husband. Further evidence indicated that M's husband had continued to insist

<sup>59</sup> File 27, *supra*, note 33 at 1.

<sup>60</sup> *Ibid.* at 11.

<sup>61</sup> *Ibid.* at 10.

that she mow the lawn every week despite the fact that she kept collapsing and was, according to the doctor, running the risk of a heart attack. This evidence was used to show M's increasing stress levels, not her abuse or fear of abuse.

M's lawyer then goes on to describe what actually occurred on the night in question. The transcript states:

[M's] husband's] family were present for a party. By 5 o'clock M's husband was starting to manifest signs of becoming angry. M suggested the family should leave. The family left and her husband's anger increased. There was obviously some trouble, some stress and strain because she appears to have got on the phone to ring for aid. G, her son in law, gave evidence that at some stage she rang him and wanted him to come down and she rang him again and in the end he told her not to worry him. He declined to say why she was ringing him in cross-examination but she was patently trying to get some help and he made the suggestion to her that she should sleep out the back in the car. Then another suggestion was out the front in a bed. There was a bed under a tree in a yard and she was patently trying to get some assistance from somewhere before the incident ever happened. She also phoned her daughter who lived some distance away. She was in a distressed state and was saying that there was trouble, her husband was making a lot of trouble and the daughter didn't do anything.<sup>62</sup>

The transcript provides clear evidence that M was very distressed and frightened and was unable to obtain help from any member of her family. As a last resort, M attempted to ring her neighbours. Her lawyer stated:

She had a reluctance to ring the neighbours next door because in spite of the history some matrimonial unhappiness and trouble there had been periods of considerable happiness- She was very fond of her husband. She loved him, she could not leave him.<sup>63</sup>

Her neighbour unfortunately said she would come and see M the next day.

The judge in M's case had considerable difficulty understanding why M did not contact other people in her immediate neighbourhood. The lawyer reiterated the statements made above, about loving her husband. He did not however use the information from M's initial statement which suggested she feared repercussions from her husband if she contacted neighbours. The judge also had difficulty understanding why M just did not leave or run away from her husband. She was considerably more agile than him as he suffered from arthritis and had recently undergone hip replacement surgery. The lawyer merely reiterates comments about M loving her husband and feeling she could not leave because of his disability. It is ironic that at this point, M is viewed critically by the court when in fact all she has done is to conform to the behaviour of the so called "good woman". She has sacrificed her own

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<sup>62</sup> *Ibid.* at 7.

<sup>63</sup> *Ibid.* at 8.

self interest to the needs of her partner and has coped, cared, and nurtured. By drawing attention to M's loving and caring abilities in this way, the lawyer is able to emphasise the fact that M really is a good wife. Thus, M's ability in the domestic sphere is emphasised. However, reinforcing the image of the good wife is achieved at the expense of a more realistic understanding of M's situation.

The striking feature of the account of events leading up to and including M's offence is that the issue of domestic violence is never once considered in terms of its social, economic or ideological dimensions. M's experience, and her response to it, are portrayed as idiosyncratic elements in her life which can only be explained by reference to her own personality. There is no acknowledgment that victims of domestic violence perceive themselves to be totally dominated by their partners, and that they are frequently unable to leave because they are socially and physically isolated and fear reprisals from their violent partners.<sup>64</sup> If M had been portrayed in these terms, her failure to contact other neighbours and her failure to run away may have been understood more readily by the judge. However, such a construction requires that lawyers and judges actually have some insight into the reasons and effects of domestic violence. A study by Bacon and Lansdowne suggests that lawyers frequently cannot or do not seem to understand the issue of domestic violence from a woman's perspective. Bacon and Lansdowne concluded that:

The images of women as victims, neurotics and provocateurs, and the ideology of privacy which surrounds the institutions of sexuality and the family, play a role in perpetuating the domination and violence experienced by these women. The same ideologies and myths pervade the criminal justice system and [prevent] the actual circumstances of these homicides emerging in the court...<sup>65</sup>

At first glance it looks as if the portrayal of M in terms of the dominant discourses of femininity, may have reduced her sentence. The information in the transcript indicates that M's charge was reduced from murder to manslaughter. However, a closer examination of the transcript and the initial statements made to police suggests that M may have been able to receive an acquittal had the issue of the husband's violence been more adequately addressed. Presenting M in stereotypical terms as a passive woman who was incapable of acting, and obscuring the information on domestic violence which gave M possible cause to act, precluded any arguments relating to self defence. This is because self defence suggests that the woman is responding rationally to a threatening situation and has acted capably and to some degree aggressively in order to protect herself. This image just does not fit with the image created. Rather than provide an account which more closely reflects the reality of this woman's life, M is portrayed in terms which perpetuate the notion of the stereotypical woman. This construction of M's life and actions also perpetuates the notion that domestic violence is a private act and not an event with social, economic and ideological dimensions. Portraying M in these terms quite possibly resulted in more punitive consequences than she would have received had the issue of domestic violence been more adequately considered.

<sup>64</sup> Edwards, *supra*. note 40.

<sup>65</sup> *Ibid.* at 177.

M's case is not the only one which denied or obscured alternative accounts of a woman's life and crime. In the case of J, the woman who had sacrificed her child, the issue of motherhood was carefully ignored. One could almost be forgiven for forgetting that the case is about a woman who killed her own child. What is at issue in this case is J's insanity, identified by her failure to conform to the specific domestic requirements of cleanliness and tidiness.

J's case is in many ways significantly more complex than the case of M. It is perhaps more difficult to look beneath the labels which have been ascribed to J, because in many ways the labels fit her situation relatively well. They do not seem incongruous because J is clearly the irrational, insane woman which the court recognises. Yet, if one considers J's situation in its entirety, it is possible to discern how these labels have enabled the court to ignore at least some of the social, economic and ideological dimensions of this woman's life. The following analysis demonstrates how the image created of J obscured an analysis which dealt with the social and psychological issues of motherhood.

At no stage in the account provided to the court was the birth of the child considered to be a precipitating factor in J's illness. This is despite the fact that there was no previous history of mental illness and it was only after the child's birth that J began to believe that God was talking to her. In some ways this failure to account for J's mental instability in terms of birth and lactation is surprising. Defining J in terms of a pathology associated with childbirth would conform with the notion that female reproductive biology is a disease which results not only in hormonal imbalance but can create unbalanced women.<sup>66</sup> Conforming to such a definition would clearly demonstrate that J was a stereotypical woman.

One possible reason that this argument was not used is that the provision for infanticide was only inserted in the Western Australian Criminal Code in 1986. Section 281A recognises that a woman who kills her child when the balance of her mind is disturbed from lactation or childbirth is guilty of infanticide. Section 287A provides that the woman is liable to imprisonment for seven years when she has committed the crime of infanticide. However, the judge has discretion as to the sentence awarded. Given that the provision was not available, her lawyer did not need to establish that J's mental instability was the result of childbirth. Nevertheless, it is surprising that the issue was not used to demonstrate J's insanity as it seems to provide a stereotypical reason for J's insanity and has more relevance than the evidence provided of J's domestic skills.

It could be argued that her lawyer ignored this issue because it ensured that the potential psychological and social problems occasionally associated with childbirth were disqualified from the account and the role of the mother was somehow kept in its pristine form. A woman is meant to be at her most fulfilled when she is mothering a small baby. She is not meant to be driven insane by the activity. By ignoring the psychological, social and economic aspects of her crime, J the woman, not J the mother, is identified as the problem. She needs to be defined within the discourse of

<sup>66</sup> Carlen and Worrall, *supra*. note 9 at 6.

pathology because it is incomprehensible to society that a sane woman would damage her baby. However, her pathology needed to be of a kind which is in no way associated with her role as child bearer and mother. As one commentator notes, "To admit that the social and economic circumstances of motherhood may cause crime is to open a hitherto tightly closed box".<sup>67</sup> In J's case an alternative account of her life and crime would probably not have resulted in an alternative verdict. However, a portrayal which defined her in more realistic terms may have influenced the treatment she received.

While J was clearly insane, there are other cases where the label of insanity is applied in circumstances where that label is possibly not warranted. Portraying a woman as insane precludes an account of a woman's life which demonstrates sane reasons for her crime. Mrs L's attempt to kill her sick husband falls into this category. As was demonstrated in the section on pathology, L was portrayed as a caring and nurturing woman who could only have committed such a crime because the balance of her mind was disturbed. However, L's explanation for her crime appears to be based upon a rational approach to a difficult dilemma. In her statement to the police, L explained that she had given her paraplegic husband an overdose of sleeping tablets shortly after he had lost the ability to speak.

The reason why I gave [him] the sleeping tablets was because he had suffered enough and I was going into hospital and didn't know how long I would be in. I knew [he] could not look after himself and would have to be put in hospital. The fact that he could not communicate was the problem. I thought this would be the kindest thing to do to [him]. I know it is wrong to play God but [he] has suffered so long.<sup>68</sup>

While individuals may not agree with her choice of action, her reasons are not the reasons of an insane woman. By portraying L in these terms, she is represented as conforming to the stereotypical role of the mentally unstable woman, but such a portrayal does not seem to reflect the reality of her situation. Moreover, in terms of sentencing, it has serious consequences. L was acquitted on the basis of unsound mind. Superficially, this may look like a less punitive result than a verdict of guilty for an attempt to unlawfully kill but when an offender is acquitted on the basis of unsound mind the judge must order that the individual remain in strict custody, most probably in a mental institution, until Her Majesty's Pleasure is known. The judge has no discretion in the sentence awarded. One can only speculate how it must feel to be placed in a mental institution for an indefinite period of time when one is not insane. In contrast, the judge does have a discretion in sentencing when the offender is found guilty of unlawful killing. The judge may even place the offender on probation rather than imposing a prison term.

This is exactly what happened in the case of R who was found guilty of attempting to unlawfully kill her two children.<sup>69</sup> This case was discussed in the section

<sup>67</sup> Judith Osborne, "The Crime of Infanticide: Throwing Out the Baby with the Bath Water" (1987) 6 *Canadian Journal of Family Law* 47 at 57.

<sup>68</sup> File 13023 *supra*, note 37 at 6.

<sup>69</sup> File 71, *supra*, note 44.

on women and pathology. R was portrayed to the Court as an irrational/depressed woman who was having difficulty dealing with her marital breakdown. She was not portrayed as insane. R was given a probation order with compulsory psychological counselling and the children were returned to her care. Given the extenuating circumstances in L's situation, it seems possible that a plea of guilty coupled with a presentation by Counsel which emphasised the extreme stress L was under when she committed the offence, may have resulted in an equally lenient outcome. Disqualifying an account of L as a sane woman precluded this possibility.

As the previous cases demonstrate, disqualifying or obscuring alternative accounts of a woman's life and crime can have a considerable impact on the way in which a woman is portrayed to the court and the sentence which she receives. Ignoring these factors and portraying a woman in stereotypical terms which precludes an analysis of the social, economic and ideological dimensions of her life not only results in a legal presentation which fails to deal with the reality of her life, but also potentially limits the choices which can be made about her plea and the defences which may be raised.

### Conclusion

The violent female offenders in this study were constructed in the stereotypical terms first identified by Worrall and Allen.<sup>70</sup> Each woman was portrayed to the court in terms of her ability to conform to the roles and the behaviour traditionally associated with the feminine woman. These attributes included, but were not confined to, the woman's domestic skills, her pathology and her inability to act with intent and volition.

Central to this paper was an examination of the effect which this stereotyping had, both upon the way in which a woman's life and actions were portrayed to the court and the sentence she received. The study indicates that, for these women at least, the use of stereotypical images gradually deleted any information from their cases which suggested they were capable of acting, or were aware they were acting. The effect of this process was threefold. Firstly, it aided the perception that these women either did not commit the violent crimes of which they were accused or did not intend to commit these crimes. Secondly it deleted from the case any information which presented a contrary image to the court and which indicated an alternative rationale for their crime. Crucially, it invariably deleted the woman's own account of her actions and her perception of her crime.

The issue of women being silenced is significant. Because law has the power to disqualify alternative accounts and dismiss women's experience, a woman is denied the right to speak and to explain herself in her own terms. Analysing the transcripts for this study demonstrated how a woman's experience is mediated through others in terms which fail to reflect the complexity of her situation. The study by Bacon and Lansdowne<sup>71</sup> and the interviews by Worrall suggest that this problem is compounded

<sup>70</sup> Worrall and Allen, *supra*. note 1.

<sup>71</sup> Cited in Edwards, *supra*. note 36.

by the fact that lawyers and other professionals often don't understand or recognise women's experience.

The final section of the paper considered whether the women in this study benefited from a stereotypical construction of their lives. Worrall suggested that women had the punitive consequences of their actions minimised when they were presented in these terms. The cases of S and R support this proposition. S received a probation order even though she had killed her husband. R received a probation order even though she had attempted to kill her two children. Both of these women were presented to the court as irrational women who did not know what they were doing.

Significantly, however, two cases do not support Worrall's proposition. In these two cases the women would seem to have received harsher penalties for their crime precisely because their lives were constructed in stereotypical terms. In the case of M, defining her life in terms of an idyllic domestic existence precluded any examination of the effect of domestic violence upon her life. This was compounded by the failure to consider M as a woman capable of acting intentionally which precluded an analysis of her actions as a form of self defence. A less stereotypical analysis of her life may have enabled her lawyer to establish that M had responded in self defence and this could have resulted in an acquittal rather than a prison term. In the case of L, defining her actions within the discourse of pathology resulted in an acquittal on the basis of unsound mind but the consequences were that she was committed to a mental institution. A construction of her life which dealt with the complexity and stress of her situation may have enabled the court to see her actions as those of a rational woman in an intolerably difficult situation. Like R, she may have been able to obtain a probation order rather than a prison term and she would not have been placed in a mental institution for an indefinite term.

These cases suggest that the construction of women's lives in stereotypical terms does not always minimise the punitive consequences of their actions. The stereotypical presentation of these women distanced them from their actions, and obscured their reasons for these actions. This precluded an analysis that defined these women in terms of their intent and their rationality. Moreover, it precluded an analysis that was effectively able to incorporate the complexity of each woman's story. It silenced those women, disempowered them and for, some at least, penalised them even more.